THE CONSTITUTIONAL RIGHTS OF THE STATES.

SPEECH

OF

J. L. M. CURRY, OF ALABAMA,

IN THE

HOUSE OF REPRESENTATIVES, MARCH 14, 1860.

The House being in the Committee of the Whole on the state of the Union, and having under consideration the President's Annual Message—

Mr. CURRY rose and said:

Mr. CHAIRMAN: None of the opinions I shall utter will probably meet the approbation of a majority in this House, but I shall seek to challenge confidence, if not concurrence, by the manner in which I shall avow and discuss them. Much of what I shall say will not be new to those who have studied the questions, but it has been said, with much truth, that it is necessary for each generation to discuss anew the great problems of human speculation, which continually come back, after certain intervals, for re-examination.

Scarce a speech has been made or an essay written, for ten years, against slavery, in which the opinions of the early fathers of the Republic are not introduced. These, however, were but mere speculations, and were not ingrafted upon the organic law; and actual results are a safer standard by which to measure abstract principles. Besides, times have changed since this Government was first inaugurated as an experiment, not yet satisfactorily tested. Then there were but little over half a million slaves, and scarce a pound of raw cotton exported. In 1784, a vessel containing eight bags of cotton was seized at the custom house in Liverpool, on the conviction that so much cotton could not be the growth of America. In 1787, in the debate on slave representation, in the convention that framed the Constitution, Mr. Pinckney said:

"North Carolina, South Carolina, and Georgia, in their *rice* and *indigo*, had a peculiar interest which might be sacrificed."

Cotton was not mentioned, for in that year there were but one hundred and eight bales shipped from the United States. Now there are near four million slaves, worth $3,500,000,000; and of southern products, there were exported last year $200,000,000, and those exports enter materially into the comforts, necessities, and luxuries of the world. Last year the cotton crop of the South was near four million two hundred and fifty thousand bales; $161,000,000 worth was exported. Bain, in his history of cotton manufacture, says:

"It is impossible to estimate the advantage to the *bulk* of the people from the wonderful cheapness of cotton goods."

And—

"The peasant's cottage may, at this day, with good management, have as handsome furniture for beds, windows, and tables, as the house of a substantial tradesman sixty years since."

African slavery is now a great fact—a political, social, industrial, humanitarian fact. Its chief product is king, and freights northern vessels, drives northern machinery, feeds northern laborers, and clothes the entire population. Northern no less than southern capital and labor are dependent in great degree upon it, and these results were wholly unanticipated by the good men who are so industriously paraded as clouds of witnesses against the institution.

Slavery has altered, and men's opinions have altered. It is now of tremendous significance and consequence. The interests associated with and dependent upon it are too momentous for it to be treated as an idle thing—made the foot ball of politicians and fanatics, and its existence and security imperiled by rash counsels and rasher action. Involving and comprehending so much; being the source of wealth and power and greatness; contributing so abundantly to civilization and humanity, is it unreasonable that the South should demand its extension and protection, and exhibit sensitiveness at the threat to surround her "with a cordon of free territory, and to compel slavery, like a serpent in a ring of fire, to sting itself to death?"

The North has demanded expansion; and is now so urgent in getting rid of a superabundant

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population as to demand that the Government shall gratuitously provide free homes as an inducement to emigration. But for an outlet, subsistence would have pressed close on the heels of production, and there would have been that irrepressible conflict between capital and labor which excites so much apprehension among reflecting men, and of the disastrous harvest of which New England is now reaping the "first fruits" in the strikes at Lynn, Natick, Marblehead, and other neighboring towns. To deny future expansion to the South, is either cold, ferocious, malevolent cruelty, or it is a significant concession that our system is not subject to the same evils which afflict or threaten the more populous North. The South needs expansion, now or hereafter. The right, the liberty, must not be gainsaid or restricted. We legislate for the future. A decade, a century, may be but a span in a nation's history. He is a poor statesman, and worse philanthropist, who will do nothing for posterity because posterity has done nothing for him. Keeping the slaves, increasing rapidly, within circumscribed limits, while the whites diminish by emigration, is the inexorable effect or purpose of the merciless policy which denies to us expansion. The numerical ascendency of the blacks, or the vast disproportion of the races, with the exhaustion of the productive capabilities of the soil, will render emancipation certain, or slavery unprofitable, or the destruction of the white race probable, or the establishment of another Jamaica but a question of time; where, according to a late English work, (Trollope's,) there are three hundred thousand blacks, seventy thousand colored people, and only fifteen thousand whites; and the African breed, through the parliamentary system and the electoral franchise, has the control of the Government.

This normal law of national being, this necessity of growth, must find development, if possible, in the limits of the Union. For years, the action of the General Government denied or qualified this essential right, and prohibited to the South that equality of condition, without which the Government could not and ought not have been established. Mr. Webster, who was ostracized for not keeping pace with the precipitate tread of anti-slaveryism, said, in 1847:

"We should take the first, last, and every occasion which offers, to oppose the extension of slavery."

And in 1848:

"I shall oppose all such extension, at all times and under all circumstances, even against all inducements; against all limitations of great interests; against all combinations; against all compromises."

The Republican party, so powerful and well disciplined, harmonizes to-day solely in its advocacy of this one controlling, overmastering dogma.

All "territory" outside the limits of a sovereign State, "belonging to the United States," is common property, and every citizen has equal rights in and to it. It was acquired by the Federal Government for the common benefit of the States united. It is held by the Government, acting as the agent of the people of the several States, for their common use. The universal conviction at the South is, that we have the right to emigrate unmolested, with our slaves, to any Territory belonging to the United States. SEWARD and the Republicans say, "No; Congress, by positive legislation, must exclude us." Prominent men in the North, some of whom act with a more healthy organization than the Republican, say, "No; the Territorial Legislature *may lawfully* exclude us." Only a question about the *mode* of exclusion, which is to be accomplished by either process. In one event, we are to be killed by the congressional garrote; in the other, by the more stealthy process of territorial poison. Bear with me, while to both I endeavor to apply the touchstone of logic.

The doctrine of congressional exclusion is tersely and boldly expressed in the Republican platform, which declares that "the Constitution confers upon Congress *sovereign* power over the Territories of the United States for their government; and that, in the exercise of this power, it is both the right and duty of Congress" to prohibit slavery in the Territories. The powers of the Federal Government are expressed in the grants of the Constitution; and, to authorize the exercise of power, it is not barely necessary to show the absence of prohibition, but an affirmative grant, or a "necessary and proper" implication from such affirmative grant. What clause warrants the inference of such supreme power? The unsuccessful search of the bird sent out from Noah's ark typifies the effort to locate the exact clause which authorizes this gigantic claim of sovereignty. As Mr. Clay said of the constitutional power to incorporate a national bank, it is a vagrant power. Mr. Curtis, in his argument in the Dred Scott case, had been called upon by the opposing counsel to point out the precise clause on which he based the power of Congress, and not to support an assertion of the power by citing the Constitution *passim*. "Their call," said Mr. Curtis, "shall be answered. I give them notice that my argument will be confined to the third section of the fourth article." And in his elaborate argument, as well as in his recent able pamphlet, he confined himself to that clause. Mr. Benton, in his review of the Dred Scott decision, scornfully repudiated the idea that that clause contained any such substantive power; and asserts that the Territories, as political entities, are never once mentioned in

the Constitution, and the word "territory" occurring but once, and that as property, assimilates to other property—as land, in fact; and as a thing to be "disposed of—to be sold."

Most usually, however, the advocates of this power agree with Mr. Curtis and the distinguished gentleman from Ohio, [Mr. CORWIN,] and base the assumption upon the power of Congress "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." This clause was adopted without debate in the convention; and, says Judge Campbell, "was demanded by the exigencies of an exhausted Treasury, and a disordered finance, for relief by sales, and the preparation for sales, of the public lands." It was little imagined that there was lurking under this apparently innocent verbiage a supremacy in Congress over the territory nearly equal to that claimed by the British Parliament over the colonies; and that Congress, when it exercised jurisdiction over this public property, could launch out into the shoreless, starless sea of discretion, determining the rights and disabilities of inhabitants, and disfranchising whole communities of their property-rights. It is an assertion of the power to create and establish the social and political system of every new State; and hence the action of the Republican Legislatures of Ohio, Vermont, Connecticut, &c., instructing their members of Congress to vote against the admission of new States into the Union, thus concurring in the recommendation of the *Hartford* convention, to curtail the slave power by preventing the admission of any more slave States.

In this clause, "territory or other property" is the subject, the *corpus* of the grant. The power given is to make needful rules and regulations for the property of the United States. The most common analysis of the phraseology shows that "territory" is spoken of as one of the kinds of property. If it be a general, absolute, unlimited, sovereign grant of legislative authority over the property, the other clause in the Constitution giving exclusive legislation over the seat of government and places purchased for forts, magazines, arsenals, dock-yards, and other needful buildings, was entirely unnecessary. It was a cumulative and specific grant of what was, in more general and comprehensive phrase, elsewhere granted. In the case of the United States *vs.* Gratiot, as well as in the Dred Scott case, the judges say that "the term 'territory' is merely descriptive of one kind of property, and is equivalent to the word 'land.'"

If the construction placed on this clause be correct, and unlimited legislative power be conferred, and a substantive authority for civil government be conveyed, the conclusion seems irresistible, that Congress can exclude slavery from every foot of the public domain, whether in Alabama or in Kansas, whether in the States or in the Territories. The power to "make rules and regulations" applies as well to "territory or other property" in the States as in the uninhabited wilderness. From this clause alone does Congress derive the power to dispose of the public lands, and this power operates in as well as out of the States. Towards the common territory, Congress cannot adopt any rule which is not common and uniform to every State, and has no rightful power to exclude property recognized by the Constitution of the United States, or by the constitution and laws of any particular State.

The claim of sovereign power over the inhabitants of the soil, *as derived from the power to dispose of the soil, or lands, or territory*, is a re-enactment and revival of one of the "essential facts and constitutive elements of the feudal system." That system blended sovereignty with property, and attributed to the proprietor of the soil, over the inhabitants, almost all the rights we call sovereignty, and such as are possessed by the Government. It ascribed to the possessor of the fief all the rights of the public power; and the proprietor of the soil could enact laws, impose taxes, and render justice. Guizot, in his history of civilization of France, says the feudal *regime* was considered by the mass of the population as an enemy to be fought and exterminated at every hazard. From its origin to its destruction, from its epoch of splendor, and at the period of its degradation and decay, the feudal system was never accepted by the people. The Republican doctrine, deduced from the proprietorship of the soil, from the possession of real property, is as repugnant to all American ideas of personal rights and personal liberty—to the elemental necessity of the consent of a people to the existing Government—as feudalism was to France, when whoever struck a blow at it had popularity.

To this claim of sovereign power over the Territories, as derived from any source, I might, as against the Republicans, have conclusively interposed the decision in the Dred Scott case, wherein the act of Congress prohibiting slavery in the Territory was solemnly adjudged to be unconstitutional and void. The decision was full and proper and essential. So satisfactory and grateful was it to the South, there is danger of forgetting one of the old State-rights landmarks. The Supreme Court is not to be regarded as the ultimate arbiter for the decision of all constitutional questions. Besides the fact, that the judiciary can only take cognizance of technical cases—and there are many political questions that cannot be drawn within its authority—it should never be elevated above the sovereign parties to the Constitution, who, as sovereign and independent States, having formed the

compact, have the unquestionable right to judge of its infraction. The judiciary, as well as the Executive or Legislature, may usurp dangerous powers, and is alike subject to the ultimate right of judgment by the parties to the Constitution. To use the language of Madison's report:

"However true it may be, that the judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the judicial, as well as the other departments, hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it."

We accord to this decision a higher authority than that claimed for the ordinary current of judicial decisions, because the court, in this instance, was made the umpire of the question by express legislative enactment; and to its weight as an adjudication is superadded the authority of a law, admitted by its opponents to be not unconstitutional.

The second mode by which exclusion from the common property is to be accomplished, or the right of the South to expansion is to be or may be defeated, is through the alleged power of a Territorial Legislature. This theory is of recent birth, and is differently explained and limited—sometimes not without confusion of ideas and misapplication of terms; but its zealous advocates press it, under euphonious and popular names, as if, like some quack medicine, with equally attractive nomenclature, it were the never-failing catholicon for all the ills that our body-politic is heir to. It is an erroneous opinion that this mode of exclusion is advocated solely by a fragment of the Democratic party at the North. Not an instance can be cited, since 1850, wherein the Republicans or Free Soilers, whatever may have been their paper theories, have failed to vote for every measure practically carrying it out. During the Kansas controversy, various amendments were proposed and sustained by the Republicans, empowering the Territorial Legislature to exclude slavery, or construing the bill so as to recognize this power. I am informed that that party in Kansas, Nebraska, Minnesota, and Oregon, incorporated this doctrine in their platforms, and conducted their political campaigns on that issue. Once a Territorial Legislature was regarded as the creature of Congress, limited in its powers of legislation, as having no sovereignty, and as being wholly subordinate to the creative power. Its action was revisable; and a single act of Congress could sweep it out of existence. Its power being derivative, it must conform to the law of its being; and neither by direction or indirection could it transcend the powers of its Federal creator. Latterly, however, territory is only common property if then, until it is organized into a territorial government; when, by some legerdemain or hocus-pocus, it becomes a *quasi* or absolute sovereign, and is invested with the indefeasible right of self-government. If, on any subject, the will of the Territory is not supreme, slavery is not the exception; for the great expounder of this new dogma asserts that a "Territorial Legislature can *lawfully exclude slavery*, either by non-action or unfriendly legislation." This power is variously derived, from the alleged inherent power of self-government, existing in every distinct political community, and from the Kansas-Nebraska bill, as indorsed by the Cincinnati platform. To the first derivation, I have no answer to make beyond the statement that it is in entire consistency with the first great experiment of squatter sovereignty—the creation of the State of California, whose admission into the Union, under the circumstances, was the most unparalleled outrage ever perpetrated on a people pretending to be free. To the second source of power, I reply that, if found there, the South was most miserably duped in that famous measure for silencing agitation. Whatever may have been the purpose of the framer of that bill—and he says in his contribution to Harper, that it was to remove any obstacle to the free exercise of popular sovereignty—it was supported at the South because of its repeal of the Missouri restriction, and because we thought we had secured a safeguard against territorial unfriendly legislation, by the provision rendering all such legislation subject to the Constitution of the United States, and by the further provision giving an appeal to the courts of the United States, in all cases where property in slaves was involved. If we were mistaken, this power to exclude slavery by unfriendly legislation—this squatter sovereignty covered up under ambiguous language in the Kansas bill, after the repeal of the Missouri restriction—is but a refined imitation of the barbarity of the petty Celtic tyrant, who fed his prisoners on salted food till they called eagerly for drink, and then let down an empty cup into the dungeon, and left them to die of thirst.

A territorial government is the creature of Congress; is provisional and temporary; and it is idle to pretend that it can usurp authority not conferred in the act of organization, and exercise power beyond the constitutional competency of its creator. Any argument drawn from the supposed analogy between such governments and the American colonies is imperfect and illusory, as most analogical reasoning is. According to the British theory, Parliament is omnipotent; and no American statesman has ever claimed over the Territories what has been claimed over the colonies—the power to bind in all cases whatsoever. The dependencies are essentially different, and are held by a different tenure.

The British Government regards the colonial condition as permanent and unchangeable. Canada was a colony one hundred years ago. She is a colony now. Territorial governments are temporary and permissive public corporations; and the Federal Government leaves them to manage their local affairs, in the full control of their domestic policy, save as restrained by the limitations of the Constitution and the purpose of equal enjoyment, for which Congress, as the trustee of the common and joint property, holds and exercises its trusteeship. The colonies relied upon the charters received from the Crown as the guarantees of their freedom from oppressive interference by the mother country; and also upon revolution—the power to make good their claim to liberty by the bloody arbitrament of the sword. Our organized Territories are mere subordinate communities outside the limits of the States; held in pupilage and training, until prepared to take rank and position with sister confederate sovereignties. If an organized Territory possess inherent rights of self-government, and can, during its pupilage, fix and determine absolutely its social institutions, decide what shall and what shall not be property, and by unfriendly legislation exclude slavery, it is superior, in some respects, to a State organization; and it is gross tyranny not to pass the bill introduced by the gentleman from Illinois, [Mr. Morris,] providing for the election of all officers by the inhabitants of a Territory. We should forthwith abdicate our ill-held power, and carry out to its logical consequences this doctrine of squatter sovereignty. Our laws appointing Governors and judges, our defrayment of the expenses of the government, and our claim of authority to repeal the organic act, and transfer the inhabitants to a different jurisdiction, are unauthorized and indefensible assumptions of control and superiority.

If a Territorial Legislature be sovereign; if it can exercise legislative supremacy while it does not violate the Federal Constitution even, if its authority to that extent be unlimited, then, to use a solecism, it is more sovereign than a State Government, and the difficulty presented in the case of Utah is remediless; for obviously it is contrary to this neoteric theory of popular sovereignty to repeal the act organizing the Territory, so long as nothing is done in conflict with the Constitution of the United States. In addition to the Federal Constitution, States are restrained by fundamental laws of their own imposing. Judicial, executive, and legislative powers are accurately mapped out, and their limits strictly defined; but under this modern political discovery, a majority in a Territory is absolute, save, as hindered by the prohibitions of the Federal compact, the Government may become despotic or anarchical, and outrages may be committed revolting to public decency, shocking to the moral sense, and subversive of personal and proprietary rights. A political theory involving such consequences is an instructive lesson against departing from established constitutional landmarks!

Every southern State has repudiated this doctrine of squatter sovereignty, and pronounced it a wrong, destructive of their rights and equality. Last summer it was announced and heralded by telegraph, that a distinguished candidate for the Presidency would not accept from the Charleston convention a nomination if tendered to him, if that convention should declare that slavery existed, by virtue of the Constitution, in the Territories beyond the power of the inhabitants to exclude it. Whether *conditions* so defiantly prescribed will be accepted, remains to be seen. Certainly the nomination of such a man would be an indorsement of his docrines, and a construction of the platform, according to his views, to be carried into the practical administration of the Government, would be dishonoring to the South, demoralizing to the party succumbing to a menace, and a practical negation of the right of southern citizens to emigrate to the common territory with that form of labor to which they have been accustomed. If the southern States have been sincere in their declarations of hostility to squatter sovereignty, or the claim set up of the power of the Territorial Legislature to exclude slavery, they will insist upon a clear, distinct, and unequivocal repudiation of the heresy. It should be done in unambiguous terms, not susceptible of a double construction. We want no Villafranca treaties to be discussed in tedious Zurich conferences, but a manly and honest assertion of principles. However others may act, Alabama has spoken. For twelve years nearly every political convention, of all parties, held in the State, has condemned this doctrine of popular sovereignty, as applied to Territories. Between its advocates and her, there is a great gulf fixed, which the mechanical genius and inventive faculties of a presidential convention cannot bridge over.

The true principle is, that if a master can go into the Territories or upon territory, his slave can accompany him; and neither Congress nor a Territorial Legislature can divest him of the title to his property. Just as soon as territory is acquired slave property is legal and constitutional, and no power can invalidate until a sovereignty interposes. The Constitution, *proprio vigore* and *instanter*, extends over the acquisition; and, in the language of Chief Justice Taney, in the Dred Scott case, "the right of property in a slave is distinctly and expressly affirmed in the Constitution." The condition of a negro is not changed by his entrance into a Territory. There is no law, constitutional, international, or local, which will make him a slave or a freeman. If he was a slave at the time of entering, he remains

such; if free, his *status* is not changed. Slavery or freedom adheres to him on the territory belonging to the United States. There can be no law in a Territory excluding slavery, as there is no power having jurisdiction competent to emancipate or alter the condition of the negro. If a negro was a slave in a State, his servitude continues in a Territory.

Slavery is not anywhere, as asserted in the Harper Magazine article, "the creature of local legislation," or the creature of local or municipal law. That it must be established and supported solely by positive municipal law, is a gross error, sustained chiefly by judicial *dicta*, which were irrelevant to a decision on the particular facts of the cases decided. No law, I believe, is found on our statute-books authorizing the introduction of slavery; and if positive precept is essential to the valid existence of slavery, the tenure by which our slaves are held is illegal and uncertain. A citizen of a southern State, or a slaveholding country like Brazil or Cuba, can carry with impunity his slave into any country where, "by the laws thereof," slavery is not prohibited. The passage of a master with his slave through the territory of a non-slaveholding State, does not change the condition of the slave, unless there is a legislative enactment to that effect; and the law of nations protects the master *in transitu*, enforces the law of the domicil, if that protection does not contravene public policy and the essential interests of the community. It is a well-settled legal principle that a person born into slavery in a foreign State, would not be liberated by the accident of intogression into another country, where there was no law opposed to the existence of slavery. The law of nations recognizes the relation; and any interference with the rights of the master, without valid cause, by the authorities of another State, is a violation of that law. (See Judge Campbell's opinion in the case of Dred Scott *vs.* Sanford.) Unless there is a positive prohibitory law in a foreign State, I can take my slave there, and have him protected. Mr. Webster, in his correspondence in the Creole case, contended that property in slaves did not cease extra-territorially, and our Government, in several instances, has maintained the same doctrine.

It has been frequently stated in Congress that slavery was not introduced into a single British colony by authority of law, and that there is not a statute in any slaveholding State legalizing African slavery, or "constituting the original basis and foundation of title to slave property." Mr. BENJAMIN, in a very masterly speech in the Senate, showing that slavery was protected by the common law of the world, pressed the argument that every one of the States would be a slave State yet and now but for the passage of laws prohibiting slavery therein. "All had to pass positive acts of legislation to accomplish the purpose of getting rid of slavery." This principle has been repeatedly questioned by Abolitionists and Republicans. On the 21st of March, 1842, Mr. Giddings introduced his famous resolutions on the Creole case, one of which asserts that—

"Slavery, being an abridgment of the natural rights of man, can exist only by force of *positive municipal law*, and is necessarily confined to the territorial jurisdiction of the power creating it."

A noted abolition Senator [Mr. SUMNER] makes as the text of one of his inflammatory harangues: "Freedom national, and slavery sectional." The late Republican convention in Indiana incorporated into its platform a similar opinion. Recently this doctrine has found indorsement in different quarters. A resolution of the last Democratic convention of Illinois—so much of which as related to this subject was read and approved in this House, by an extreme Republican member from that State, [Mr. FARNSWORTH]—declares that slavery, if it exists in a Territory, does not derive its validity from the Constitution of the United States, but is a mere municipal institution, existing in such Territory under the laws thereof. The same is said to be true of slavery in a State. As such a doctrine, so far as my information extends, was never previously adopted in a Democratic convention, I may class it as the second progeny from the parental stock of squatter sovereignty! If this be established as the law, and applied in practice, it will require an act of the Territorial Legislature to legalize slavery, and a slaveholder will have no right to enter the Territory with his property until after such enactment. If slavery can only exist in a Territory, as the resolution asserts, by virtue of the laws thereof, if it has no validity except by virtue of a local law, then a slave cannot be held as property in a Territory where there is no local law authorizing it. According to this doctrine, there must be previous affirmative legislation establishing the right of property in slaves, or an owner of slaves cannot carry them into the Territory; and thus the South is practically and forever excluded. It is unnecessary to talk about congressional prohibition, and the power of a Territorial Legislature to exclude slavery; if the Illinois theory be adopted, a slave cannot get into a Territory to be held as property.

The Illinois resolution but adopted a suggestion of Judge DOUGLAS, in his attempted rejoinder to the observations of Judge Black, in his Harper article. He quotes and adopts a *dictum* taken from an opinion of Judge Story, whose anti-slavery prejudice and bias are well known and lamented, in the case of Prigg *vs.* the Commonwealth of Pennsylvania, that "the *state of slavery is* deemed to be *a mere municipal regulation, founded upon*, and limited

to, the range of territorial laws;" and thus he coincides with Giddings and SUMNER. Cobb, in his very learned treatise on slavery, by irrefragable proofs, demonstrates that the *dictum* of Judge Story was not at all necessary to the decision of the case, and is wholly unsustained by adjudications; yet it is greedily adopted, and made the substratum of a theory which upsets a recent decision of the same court, and effectually excludes, if carried into practice, the South from the occupancy of the common territory. With bold assertion and ingenious sophistry, the Dred Scott decision is evaded, in part, and mystified; while an assertion of a judge in another case is laid hold on, to bolster a theory contrary to the practice of the Government since its organization, and utterly destructive of the rights of a minority section of the Confederacy. Whatever may been Judge Story's legal erudition—and it was cyclopedian—he has never been regarded as an authoritative exponent of Democratic sentiment or constitutional law. It may gratify some of the special political admirers of the great expounder of squatter sovereignty, to know that the son and biographer of Judge Story records, in his Life, that the Judge repeatedly and earnestly spoke to his family and intimate friends of this decision, from which Judge DOUGLAS quotes so approvingly and complacently, as being "a triumph of freedom." The biographer argues that it was a judgment adverse to slavery, and "a triumph of freedom," because it localized slavery, made it a municipal institution of the States, and not recognized by law.

Slavery exists in the State where the owner dwells, exists out of the State, exists in the Territories, *exists everywhere*, until it comes within the limits of a sovereignty which prohibits it. The Constitution, as that profound lawyer and statesman, Judge Berrien, argued, recognizes slavery in a free State; speaks of it, in such free State, as an actually *subsisting debt* of service or labor, and prohibits the *discharge* of the slave. If the Constitution recognizes slavery in Alabama, and *quoad hoc* in a sovereign State forbidding slavery, does it deny my title to a slave in territory which is common property?

The treaty of peace between Great Britain and the United States, signed at Paris, on the 3d of September, 1783, on the part of the United States by three northern men—Adams, Franklin, and Jay—and which treaty was subsequently, by the Constitution, made the supreme law of the land, recognized "property in negroes." The Constitution of the United States discriminates specially in favor of slave property; provides for its increase, for its permanency, for its security, and for its representation in this body. It recognizes property in slaves; and the Supreme Court has affirmed our right to emigrate to, and occupy with slaves, the common territory; and from this recognition and guarantee, protection is an inevitable *sequitur*. From the premises, the sequence cannot be resisted that the powers of the Government are due to its security. I do not admit the right of Congress to establish or to abolish slavery—to emancipate or to enslave. The affirmative power to establish is not delegated, and there are no inherent powers in this Government. The power to abolish or exclude is not given, and the property character of slaves includes them within one of the positive prohibitions of the Constitution. All the power this Government has, is to recognize as property in the Territories whatever is recognized as such in the States; and, if need be—but not officiously and impertinently—to adopt such regulations for its security and protection as the nature of the case may require. Congress cannot abdicate its authority. If so, the executive and judiciary can do likewise. The Federal Government, through some or all its departments, must recognize and protect what the States ascertain and determine to be property. Wars and treaties are made to defend, and are, in many instances, dependent upon what the States decide to be property. An American citizen whose slave property is invaded on the high seas can demand protection of his Government; *a fortiori*, when that property is endangered on territory belonging to the United States. In the language of a resolution adopted by the Alabama Democratic convention in 1856, and reaffirmed in 1860—the sentiment of which was taken from the speech of a northern Democrat in this House—the South is entitled to the protection of its property in the States, in the Territories, and in the wilderness, where territorial governments are as yet unorganized. To refuse it is to deny her equality in the Republic, and to fail to fulfill the great purpose for which governments are ordained.

It may not be amiss to sustain this claim to protection by high authority. The President, crowning a long life of usefulness, patriotism, and devotion to the Constitution, congratulates the country upon the just settlement of the question of slavery in the Territories by the Supreme Court, and asserts the right of every citizen to take his property of any kind, including slaves, into the common Territories, and to have it *protected* there under the Federal Constitution. The Vice President, so justly popular with the American people, vindicates the same right. One of the most eminent lawyers of this or any other country, now an honored member of our highest court, in 1850 said that "the doctrine that the Government, holding the power of peace and war, of making compacts and alliances, of acquiring Territories and forming governments, owing no duties to the property of fifteen States or those Territories, is a proposition addressed to the credulity of the South, and which nothing but credulity can tolerate." Mr. Calhoun, who stood—

> "Like a great sea-mark, standing every flaw,
> And saving those that eyed him,"

in his letter to Colonel Benton, writing of the character and object of the Government, says:

"Its power and authority having for their object the more perfect protection and promotion of the rights and safety of each and all, it is bound to protect, by their united power, the safety, the rights, the property, and the interests of the citizens of all, wherever its authority extends. That was the object for conferring whatever power and authority it has; and if it fails to fulfill that, it fails to perform the duty for which it was created. It is enough for it to know that it is the right, interest, or property, of a citizen of one of the States, to make it its duty to protect it, whether in the Territories or on the high seas, or anywhere else. Its power and authority were conferred on it, not to establish or abolish property or right of any description, but to protect them."

The resolutions of the Senate caucus, which were called for by the exigencies of the times, and which are sustained by every Democratic Senator but two, concede the same right of protection.

It is objected by some to this claim for Federal protection, that it necessarily involves or concedes the right of congressional prohibition. Nothing can be more illogical than to confound *protection* with *destruction*—the power, by legislation, of facilitating the enjoyment of a right and of throwing obstructions in the way of the exercise of such a right. Numerous instances will readily occur to any thoughtful mind, where Congress has the power of affirmative without the power of negative legislation. Congress can make no law abridging the

freedom of speech, or of the press; nor depriving a person of life, liberty, or property, without due process of law; nor interfering with the trial of crimes by jury, except in cases of impeachment; but Congress can certainly legislate affirmatively to secure the enjoyment of, or remove obstructions to, these constitutional prerogatives. If the right to hold slaves in a Territory cannot be interfered with prejudicially by Congress, it most assuredly can prevent its creature from accomplishing the same unconstitutional purpose by unfriendly legislation. It is simply absurd to pretend that to destroy is the correlative of to protect.

A less consequential, but, with some a more important objection to the claim, is its alleged inconsistency with non-intervention, as proclaimed in the Cincinnati platform. If this were true, I might simply say, "Grant it, and what then?" But it is not true, and the application of the same term to the States and this District, as to the Territories, demonstrates, without further argument, the bad logic which would restrict us to non-action. I challenge the production of a line in the legislation of 1850, as applied to the Territories, in the Kansas bill, or in the Cincinnati platform, which can fairly be tortured into a relinquishment by the South of its right to protection. Non-interference or non-intervention could mean nothing else than that Congress would abstain from questions over which it had no control; would neither establish nor abolish slavery; would not intervene to accomplish purposes of doubtful constitutionality.

Non-intervention, as used by some, is a shallow device, and means that the Federal Government is the enemy of slavery; that it ignores it, and will not recognize or protect it; and that it will not lend its power to uphold and sustain it. It is a shuffling, but disastrous, compromise between our right to protection, and the power claimed to cripple and abolish. It is a relinquishment of the duties of Government, and an abandonment of our equality and manhood. Complete non-intervention in reference to slavery, is aggressive action against us; is discrimination exceptional and adverse to slave property; is "accumulated and unequal protection to antagonist and rival interests." We entered the compact, and delegated the exercise of certain sovereign powers, that they might be used more efficiently for our protection and security. If the Federal Government refuses us protection from unfriendly legislation, or "refuses to carry the claims of the slaveholder for redress to the proper tribunal, the slaveholders must establish a Government that will render adequate protection, or become an easy prey to foreign rapacity or domestic fanaticism." "If the slaveholder is to have no surrender of his fugitive slave, he must have an army or navy to guard his frontiers or coasts, and to punish the enemy who harbors his property. If the slaveholder can enjoy no share of the common property of the Union, he must be exempt from taxes and military contributions. *Protection* is the price paid by Government for the support of its citizens, and I can conceive of no disgrace more heavy, no degradation more bitter, than the denial of this right of protection, with a simultaneous claim for maintenance against the slaveholder."

It may be said that these are judicial questions and mere abstractions, which can be safely left to the future, to be determined as exigencies may arise. In a late memorable case, appeals have been made from the Supreme Court to popular prejudice and passion, and interpretations of the decision form parts of political platforms. History is full of instances of judicial subserviency, and political opinions very often control judicial conduct. The famous Somersett case, the direful spring of unnumbered woes, was decided under circumstances that reflect no credit on the moral courage of the eminent judge. The proposition of Senator SEWARD, to put the Supreme Court on the side of freedom, is fearfully admonitory of the influence of popular excitement on the judiciary. If I could lift my voice so as to be heard by the South; if she would heed the admonition of a loyal son, in tones of earnest entreaty, I would beseech her not again to commit the fatal mistake of yielding to party necessity what may be essential to future safety; not to concede a principle, which, however apparently abstract or impracticable, may, in the hands of hostility or fanaticism, prove a potent engine of mischief or destruction.

[The hour expired at this point, but, by unanimous consent, Mr. CURRY was allowed to proceed.]

As said Pitt, on the East India bill:

"It would be folly in the extreme, to suppose that the principle once admitted would operate only on the present occasion. Good principles might sleep; but bad ones never. It is the curse of society that, when a bad principle is once established, bad men will always be found to give it its full effect."

Mr. Chairman, for what is the Democratic party contending? Is it for spoils and patronage, or for principle? Is this immense array of means, this combination of agencies, this drilling for the strife, but to win a victory, barren and fruitless and Pyrrhan? Are we to struggle for a President, merely to dispense executive patronage and feed a greedy swarm of leeches? This is of no avail, is mischievous, unless accompanied by practical results, by a triumph of principle. The election of a President, however pure and patriotic, will be as deceptive as Dead Sea fruit, unless accompanied by a corresponding elevation of popular sentiment. Sir, there is no strength in numbers, in a mere aggregation of men. A party must be animated by a common faith; be vitalized by principle; must embody imperishable truth; and its principles must not be mere exceptional maxims, politic and convenient forms, applicable only to temporary exigencies, and to be laid aside as a snake sloughs off its skin.

I have finished, Mr. Chairman, what I have to say on these questions, endeavoring to compress into one hour what, if properly elaborated, would have required several; but I cannot close without repelling an accusation which has been made on this floor, and at Chicago and elsewhere, that the President and the Democratic party, in favoring the admission of Kansas with the Lecompton constitution, were endeavoring to fasten "a fraud" upon the country, and "force a constitution upon the people of Kansas against their will." One Senator, [Mr. DOUGLAS,] who was most conspicuous in his hostility to the Administration, and his warfare on the Democratic organization, while recording his own services, and fighting the battle against such an "arrogant demand," and against the consummation of such a "fraud" as the admission of Kansas, congratulated his Republican allies for the successful and valuable aid rendered in that contest against the "Lecompton fraud."

The Kansas struggle has passed into history. Violence and wrong were committed on both sides, and there is much connected with the question discreditable to the country. As one member of the last Congress, I repel with scorn all imputation, whether it come from Republican or disorganizing and recusant Democrat, of a purpose to "consummate a fraud," or "force" an unwilling State into the Union. It is demonstrable that the Lecompton constitution was legally and validly made and ordained as the organic law of the people of Kansas, so far as they had power to institute a government. The "sense" of the inhabitants was taken upon the expediency of calling a convention to frame a State constitution. They decided in favor of the convention, and the Legislature passed a law authorizing the election of delegates, and, at a subsequently legal and fair election, the delegates were chosen. The country will not forget that there is no allegation of the slightest fraud, nor of a single illegal vote at any of the elections I have specified. Up to this time, there is no pretense of fraud or illegality; and the refusal of a majority, even to vote on the questions, does not affect the previous legal proceedings, and the right of a convention thus summoned to frame and ordain a fundamental law. I only interpose this brief explanation lest silence might be construed into acquiescence, into an unfounded censure.

The Alabama Legislature unanimously passed resolutions authorizing the Governor to call a convention of the State, in the event of the refusal to admit Kansas under the Lecompton constitution, supposing that these alleged irregularities were but flimsy pretenses to keep a slave State out of the Union. The President and the Cabinet, and the great bulk of the Democracy in Congress, including every Democrat from the South, sustained and favored the admission of Kansas under that constitution. It is too heavy an exaction upon party fidelity, too entire a surrender of personal manhood, to demand support at this time for the highest office in the world for any man who denounced what so large a majority of the Democracy desired and sought to accomplish, as "the consummation of a fraud."